IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

R.S.A.No.893 of 2003
Date of Decision : 20-09-2007

Hawa Singh .....Appellant

versus

The Punjab National Bank and others .....Respondents

CORAM : HON'BLE MR.JUSTICE HEMANT GUPTA

Present: Mr.H.C.Arora, Advocate for the appellant.

-.-

JUDGMENT

HEMANT GUPTA, J.

The challenge in the present appeal is to the judgment and decree passed by the learned First Appellate Court whereby the suit for declaration challenging the order dated 8.8.1989 stopping four annual increments of the plaintiff with cumulative effect was dismissed.

The plaintiff-appellant was suspended on 7.6.1986. Subsequently, he was charge-sheeted on account of his acts of misconduct. After issuing a show cause notice and affording opportunity of hearing, the Disciplinary Authority passed an order dated 8.8.1989 whereby punishment of stoppage of four annual increments with cumulative effective was imposed and that the plaintiff will not be paid any wages/allowances for the suspension period than already paid to him. The said order was challenged by the plaintiff before the Civil Court.

The learned trial Court decreed the suit holding that the order passed by the Disciplinary Authority is non speaking order and has been passed even though the Enquiry Officer has given his finding that the

charge-sheeted employee is a married person with three minor children and perpetually sick wife and there is no financial loss either to the bank or to the customers. Therefore, the order of punishment could not have been passed by the Disciplinary Authority. However, in appeal, it was found that the charges have been proved against the plaintiff in the Enquiry Reports Exhibit P-5 and Exhibit D-8. The note of the Enquiry Officer does not absolve the plaintiff of the charges framed against him and consequently, the finding recorded by the learned trial Court was set aside and the suit was dismissed.

In the present second appeal, learned counsel for the plaintiff-appellant has vehemently argued that the plaintiff was not given any show cause notice in respect of denial of wages for the suspension period, therefore, the entire proceedings are vitiated. Reliance is placed upon "***M.Gopalkrishna Naidu versus The State of M.P., AIR 1968 S.C.-240", "Shri B.D.Gupta versus State of Haryana, AIR 1972-SC-2472"*** and the judgment of this Court reported as ***"State of Punjab versus Mohan Singh, 2007 (3) SCT-751"***.

However, a perusal of the judgments of the Hon'ble Supreme Court in *M.Gopalkrishna Naidu's case (supra) and B.D.Gupta's case (supra)* shows that those were the cases where the disciplinary proceedings against the delinquent employee were either dropped or remained unsuccessful. Those were not the cases where on conclusion of the enquiry proceedings, the employee was found to be guilty of misconduct and punishment was imposed. It was held in the aforesaid judgments that if the employee has been fully exonerated, he is entitled to show cause notice if wages for suspension period are to be denied. In *B.D.Gupta's case (supra),*

the judgment of the Hon'ble Supreme Court in *"State of Assam and another versus Raghava Rajagopalachari"* was referred to and distinguished with the following reasoning:-

> "xx xx xx
>
> 19. This Court held that cl.(b) of the Fundamental Rule 54 would be applicable in all cases where the officer concerned is not honourably acquitted. Since in that cases the Government Servant had clearly not been fully exonerated of the charges levelled against him, it was open to the Government to decide what period of absence from duty during the period of suspension should be treated as period spent on duty and, also what proportion of pay and allowances should be given to him. This decision cannot apply to the instant case for the simple reason that Government, by withdrawing the proceedings initiated against the appellant in respect of Charge 1 (b) made it impossible for the appellant to get himself fully exonerated. Since the appellant had been exonerated of Charge 1 (a) and since Charge 1 (b) was withdrawn, it is impossible for Government to proceed on the basis as if the appellant has not been fully exonerated or to assume that the order of suspension was one which was not wholly unjustified. In that view of the matter, we do not think that the case of the *State of Assam and Anr. versus Raghava Rajagopalachari (2)* can be of any assistance to the respondents.
>
> xx xx xx"

In the present case, the plaintiff has been found guilty in enquiry proceedings and order of punishment has been passed against him.

Therefore, the Disciplinary Authority was within jurisdiction in passing an order denying the wages for the suspension period while imposing punishment of stoppage of increments.

The judgment of this Court in *State of Punjab versus Mohan Singh (supra)* though refers to the judgment of *M.Gopalkrishna Naidu's case (supra)*, but has not taken into consideration the effect of exoneration of the employee in disciplinary proceedings in the aforesaid case. As a matter of fact, the primary argument in the aforesaid appeal revolved around the question of limitation. Since the judgment of the Hon'ble Supreme Court in *B.D.Gupta's case (supra)* has not been noticed which draws the distinction between the employee exonerated in disciplinary proceedings and employee found guilty at the conclusion of disciplinary proceedings, therefore, such judgment does not lay down the binding principle of this Court on the question raised in the present appeal.

Consequently, I do not find any illegality or irregularity in the findings recorded by the learned First Appellate Court which may give rise to any substantial question of law for consideration of this Court in second appeal. The present appeal stands dismissed.

20-09-2007 **(HEMANT GUPTA)**
*mohinder **JUDGE**